

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RSA 7 Limited Partnership)	CC Docket No. 96-45
Iowa 8 – Monona Limited Partnership)	
Iowa RSA 10 General Partnership)	
Petition for Declaratory Ruling regarding)	
47 U.S.C. 214(e)(5))	

PETITION FOR DECLARATORY RULING

**RSA 7 LIMITED PARTNERSHIP
IOWA 8 – MONONA LIMITED PARTNERSHIP
IOWA RSA 10 GENERAL PARTNERSHIP**

July 1, 2005

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SUMMARY

In accordance with 47 U.S.C. §§ 214(e)(2) and 214(e)(5), the State of Iowa, through its Utility Board processed and approved applications to designate three wireless telecommunications companies as competitive eligible telecommunications carriers in three separate areas within Iowa. Without objection from any of the incumbent local exchange carriers in the same areas as the wireless companies, the State of Iowa established that the Universal Service Fund “service areas” for these three wireless companies would be the same as the geographic areas authorized under the FCC wireless licenses held by each company. Moreover, the State of Iowa established these USF “service areas” in conformance with Iowa administrative rules which specifically address this matter.

Pursuant to 47 C.F.R. § 1.2 the instant petition for declaratory ruling is filed to remove any uncertainty as to whether the Communications Act requires the Federal Communications Commission, the Federal-State Joint Board and the State of Iowa to undertake an additional duplicative “redefinition” of these three wireless carriers’ service areas. Although the State of Iowa has followed its state rules, allowed public participation, and issued an order, to which no party has objected or sought reconsideration, this petition seeks to clarify that no additional government action is required under 47 U.S.C. §214(e)(5).

Namely, the State of Iowa has established a defined geographic area which is the wireless companies’ service area for the purposes of determining universal service obligations and support mechanisms. A declaratory ruling is sought to confirm that the Commission and the Federal-State Joint Board do not need to duplicate the process undertaken by the State of Iowa in this unique instance where no objection has been made to the State’s establishment of USF “service areas” for these three wireless companies. The plain language of Section 214(e)(5)

appears to limit the multi-organizational (FCC, State, and Joint-Board) task of defining a “service area” to study area variance applications submitted by a “rural telephone company”. This is not an instance where a rural telephone company has applied to vary its USF “service area” from its study area. This is an instance where a wireless carrier’s USF “service area” follows its licensed cellular service area which, in turn, varies from the study areas of rural telephone companies which happen to be located in the same geographic region.

The Petitioners seek the removal of uncertainty associated with the additional 47 U.S.C. § 214(e)(5) requirement for rural telephone companies in contrast with companies serving the areas of rural telephone companies.

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TO: The Commission

PETITION FOR DECLARATORY RULING

RSA 7 Limited Partnership (“RSA 7 Partnership”), Iowa 8 – Monona Limited Partnership (“RSA 8 Partnership”) and Iowa RSA 10 General Partnership (“RSA 10 Partnership”)¹ hereby request a Declaratory Ruling, pursuant to Section 1.2 of the Commission’s Rules, that the Iowa Utilities Board (“Iowa Board”) is not required formally to “redefine” (or to initiate a state-federal proceeding to “redefine”) the service areas of various rural telephone companies located within their wireless competitive eligible telecommunications carrier (“CETC”) service areas: (a) where the Iowa Board has exercised state authority under Section 214(e) of the Communications Act to define the service areas of Iowa wireless CETCs in terms of their FCC-licensed wireless service areas (rather than the study areas of rural telephone companies); and (b) where none of the rural telephone companies located in their wireless CETC service areas have alleged cream skimming or otherwise opposed the Iowa Board’s CETC designations or CETC service area definitions. Under these circumstances, the Petitioners respectfully request that the Commission declare that it was not necessary for the Iowa Board and the Commission to conduct separate “redefinition” proceedings before the Petitioners can receive and continue to receive portable Universal Service Fund (“USF”) support.

¹ RSA 7 Partnership, RSA 8 Partnership and RSA 10 Partnership will be referred to collectively as “the Petitioners.”

The Petitioners

All three Petitioners are Iowa wireless carriers that were designated as CETC's by the Iowa Board on September 13, 2004.

RSA 7 Limited Partnership.

RSA 7 Partnership is the licensee of Cellular Radiotelephone Service Station KNKN611, which serves Iowa Rural Service Area 7 – Audubon (Cellular Market Area 418).³ Its FCC-licensed wireless service area consists of the Iowa counties of Audubon, Guthrie, Cass, Adair and Madison. This five-county service area encompasses portions of the Iowa study areas of Qwest Corporation and thirteen rural telephone companies,⁴ including some partial wire centers.

On November 8, 2002, RSA 7 Partnership filed an application with the Iowa Board for designation as a CETC. No rural or other wireline telephone company or telephone company association opposed the RSA 7 Partnership's application for CETC status. The Iowa Board granted CETC status to RSA 7 Partnership, see Order Designating Eligible Carrier (In re: RSA 7 Limited Partnership), Docket No. 199 IAC 39.2(4), issued September 13, 2004 ("RSA 7 Partnership CETC Order," copy attached as Exhibit A). Pursuant to Section 39.2(5)(c) of its Rules, the Iowa Board designated RSA 7 Partnership as a CETC for the five-county area in which it was licensed by the FCC to provide wireless service. *Id.* at p. 4. No rural telephone company or rural telephone company association objected to, sought reconsideration of, or

³ Rural Service Areas ("RSAs") are Commission-licensed service areas for cellular carriers. They generally are comprised of two or more counties.

⁴ The thirteen rural telephone companies are: Casey Mutual Telephone Company; Coon Valley Cooperative Telephone Association, Inc.; Cumberland Telephone Company; Farmer's Mutual Cooperative Telephone Company; Griswold Cooperative Telephone Company; Interstate 35 Telephone Company; Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom; Marne & Elk Horn Telephone Company; Massena Telephone Company; Panora Cooperative Telephone Association; Prairie Telephone Company; Walnut Telephone Company; and West Iowa Telephone Company

appealed the Iowa Board's order, including the Iowa Board's designation of RSA 7 Partnership's service area for universal service purposes.

The Iowa Board included RSA 7 Partnership in the annual Section 54.314 certification that it filed with the Commission and the Universal Service Administrative Company ("USAC") on or before October 1, 2004. The Iowa Board did not expressly "redefine," in its RSA 7 Partnership CETC Order or any subsequent proceeding, any of rural telephone company study areas that are located in part within RSA 7 Partnership's CETC service area. It is RSA 7 Partnership's information and belief that the Iowa Board has taken the position that it has done everything necessary to designate it as a CETC and define its CETC service area so that it may receive federal USF support.

RSA 7 Partnership has filed FCC Form 507 on or before September 30, 2004; December 30, 2004; March 30, 2005; and June 30, 2005. In each filing, it sought portable federal service support on the basis of the billing addresses of its cellular customers within its CETC service area as defined by the Iowa Board (cross-referenced, for the purpose of per-line support calculations, with the rural telephone company service areas in which they were situated).

Iowa 8 - Monona Limited Partnership.

RSA 8 Partnership is the licensee of Cellular Radiotelephone Service Station KNKN530, which serves Iowa Rural Service Area 8 – Monona (Cellular Market Area 419). Its FCC-licensed wireless service area consists of the Iowa counties of Monona, Crawford, Harrison and Shelby. This four-county service area encompasses the entire Iowa study areas of two rural

telephone companies,⁵ and portions of the Iowa study areas of Qwest Corporation and six rural telephone companies,⁶ including some partial wire centers.

On November 8, 2002, RSA 8 Partnership filed an application with the Iowa Board for designation as a CETC. No rural or other wireline telephone company or telephone company association opposed RSA 8 Partnership's application for CETC status. The Iowa Board granted CETC status to RSA 8 Partnership, see Order Designating Eligible Carrier (In re: Iowa 8 – Monona Limited Partnership), Docket No. 199 IAC 39.2(4), issued September 13, 2004 ("RSA 8 Partnership CETC Order," copy attached as Exhibit B). Pursuant to Section 39.2(5)(c) of its Rules, the Iowa Board designated RSA 8 Partnership as a CETC for the four-county area in which it was licensed by the FCC to provide service. *Id.* at p. 4. No rural telephone company or rural telephone company association objected to, sought reconsideration of, or appealed the Iowa Board's order, including the Iowa Board's designation of RSA 8 Partnership's service area for universal service purposes.

The Iowa Board included RSA 8 Partnership in the annual Section 54.314 certification that it filed with the Commission and USAC on or before October 1, 2004. The Iowa Board did not expressly "redefine," in its RSA 8 Partnership CETC Order or any subsequent proceeding, any of the rural telephone company study areas that are located in part within RSA 8 Partnership's CETC service area. It is RSA 8 Partnership's information and belief that the Iowa Board has taken the position that it has done everything necessary to designate the RSA 8 Partnership as a CETC and define its CETC service area so that it may receive federal USF support.

⁵ The two rural telephone companies are Farmers Mutual Cooperative Telephone Company, f/k/a Defiance Telephone Company; and Farmers Mutual Cooperative Telephone Company, f/k/a Manila Telephone Company.

⁶ The six rural telephone companies are Citizens Telecom of Iowa, d/b/a Frontier Communications of Iowa; Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom; Marne & Elk Horn Telephone Company; Walnut Telephone Company; Western Iowa Telephone Association; and Westside Independent Telephone Company.

RSA 8 Partnership has filed FCC Form 507 on or before September 30, 2004; December 30, 2004; March 30, 2005; and June 30, 2005. In each filing, it has sought portable federal service support on the basis of the billing addresses of its cellular customers within its CETC service area as defined by the Iowa Board (cross-referenced, for the purpose of per-line support calculations, with the rural telephone company service areas in which they were situated).

Iowa RSA 10 General Partnership.

RSA 10 Partnership is the licensee of Cellular Radiotelephone Service Station KNKN363, which serves Iowa Rural Service Area 10 – Humboldt (Cellular Market Area 421). Its FCC-licensed wireless service area consists of the Iowa counties of Humboldt, Wright, Webster, Hamilton, Boone and Story. This six-county service area encompasses the entire Iowa study areas of six rural telephone companies,⁷ and portions of the Iowa study areas of Qwest Corporation and eight rural telephone companies,⁸ including some partial wire centers.

On November 8, 2002, RSA 10 Partnership filed an application with the Iowa Board for designation as a CETC. No rural or other wireline telephone company or telephone company association opposed RSA 10 Partnership's application for CETC status. The Iowa Board granted CETC status to RSA 10 Partnership, see Order Designating Eligible Carrier (*In re: Iowa RSA 10 General Partnership*), Docket No. 199 IAC 39.2(4), issued September 13, 2004 (“RSA 10 Partnership CETC Order,” copy attached as Exhibit C). Pursuant to Section 39.2(5)(c) of its Rules, the Iowa Board designated RSA 10 Partnership as a CETC for the six-county area in which it was licensed by the FCC to provide service. *Id.* at pp. 4-5. No rural telephone company

⁷ The six rural companies are: Colo Telephone Company; Cooperative Telephone Exchange; Goldfield Telephone Company; Ogden Telephone Company; Stratford Mutual Telephone Co. and Woolstock Mutual Telephone Company.

⁸ The eight rural companies are: Citizens Telecom of Iowa; Ellsworth Cooperative Telephone Association; Huxley Communications Cooperative; Lehigh Valley Cooperative Telephone Association; Webster-Calhoun Cooperative Telephone Association; Radcliffe Telephone Company, Inc.; Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom; and Communications 1 Networks, Inc.

or rural telephone company association objected to, sought reconsideration of, or appealed the Iowa Board's order, including the Iowa Board's designation of RSA 10 Partnership's service area for universal service purposes.

The Iowa Board included RSA 10 Partnership in the annual Section 54.314 certification that it filed with the Commission and USAC on or before October 1, 2004. The Iowa Board did not expressly "redefine," in its RSA 10 Partnership CETC Order or any subsequent proceeding, any of the rural telephone company study areas that are located in part within RSA 10 Partnership's CETC service area. It is RSA 10 Partnership's information and belief that the Iowa Board has taken the position that it has done everything necessary to designate RSA 10 Partnership as a CETC and define its CETC service area so that it may receive federal USF support.

RSA 10 Partnership has filed FCC Form 507 on or before September 30, 2004; December 30, 2004; March 30, 2005; and June 30, 2005. In each filing, it has sought portable federal service support on the basis of the billing addresses of its cellular customers within its CETC service area as defined by the Iowa Board (cross-referenced, for the purpose of per-line support calculations, with the rural telephone company service areas in which they were situated).

Need For Declaratory Ruling

Petitioners desire to operate and upgrade their rural cellular facilities and services, to obtain the portable federal universal service support to which they are entitled as CETCs, and to comply with all applicable federal and state requirements.

Petitioners believe that the Iowa Board lawfully and properly designated them as CETCs pursuant to the Iowa Board's jurisdiction under Section 214(e)(2) of the Communications Act.

Petitioners further believe that the Iowa Board lawfully and properly exercised its jurisdiction under Sections 214(e)(2) and 214(e)(5) of the Communications Act to adopt a state regulation (Iowa Subrule 39.2) that defines the “service areas” of Iowa wireless CETCs for universal service purposes, and to employ that regulation to designate and establish the CETC “service areas” of the Petitioners in particular.

No rural or other wireline telephone company opposed or otherwise objected to the Iowa Board’s designations of the Petitioners as CETCs, or to its definitions of their FCC-licensed wireless service areas as their CETC “service areas.” Particularly because no rural telephone company alleged “cream skimming” or otherwise objected to the CETC service areas designated by the Iowa Board, there appears to have been no need for the Iowa Board to take further action (such as formally “redefining” the “service areas” of the non-objecting rural telephone companies whose study areas are overlapped in part by the CETC service areas of Petitioners) before the Petitioners could file line counts and receive portable federal universal service support.

Finally, Petitioners believe that should the Iowa Board and Commission conduct “service area redefinition” proceedings at this time, it would be a wasteful expenditure of Iowa Board and Commission time and resources, as well as the Petitioners’ time and resources. Such proceedings are likely to result in little or no change in the portable universal service support received by the Petitioners.

However, questions have been raised within the Petitioner partnerships regarding the need for the Iowa Board and Commission to undertake additional proceedings to “redefine” the service areas of the heretofore silent and non-objecting rural telephone companies whose study areas are located partially within the CETC service areas of the Petitioners. The Petitioners

request a Declaratory Ruling and/or any other appropriate relief to assure that they lawfully may continue to rely upon the Iowa Board's CETC designation and certification rulings and that it is not necessary for them to obtain "redefinitions" of the study areas of some or all of the more than two dozen non-objecting rural telephone companies or modify their past and future portable USF support filings with USAC.

The Communications Act Gives State Commissions Predominant Jurisdiction to Designate ETC Service Area

The Communications Act, as amended by the Telecommunications Act of 1996, gives state authorities, such as the Iowa Board, broad and express rights to designate ETCs and ETC service areas.

Section 214(e)(2) of the Communications Act declares that "a **State commission** shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) [e.g., to offer the services supported by Federal universal service support mechanisms and advertise the availability of such services] as an eligible telecommunications carrier **for a service area designated by the State commission** [emphasis added]." Section 214(e)(2) further declares that "upon request and consistent with the public interest, convenience and necessity, the **State commission** may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier **for a service area designated by the State commission**, so long as each additional requesting carrier meets the requirements of paragraph (1) [regarding the offering of supported services and the advertising of availability][emphasis added]."

Section 214(e)(5) states that the term "service area" for ETC purposes means "a geographic area established **by a State commission** (or the [FCC] under paragraph (6) [relating to circumstances where a state commission lacks jurisdiction over an applicant for ETC status])

for the purpose of determining universal service obligations and support mechanisms [emphasis added].” Section 214(e)(5) continues with a specification applicable to rural telephone companies by stating that “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for **such company** [emphasis added].”

The Joint Explanatory Statement of the Committee of Conference states that “[n]ew Section 214(e)(5) provides the definition of ‘service area,’ which in general is determined by a State commission.” 142 Cong. Rec. H1115 (January 31, 1996).

Hence, Congress clearly intended to give state commissions a predominant role and authority in the designation of ETCs, CETCs and ETC/CETC service areas, and expressly and repeatedly incorporated its intent into Section 214(e) of the Act.

The Iowa Utilities Board Lawfully Exercised Its Section 214(e) Authority and Discretion To Designate Wireless CETC Service Areas

The Iowa Board has lawfully and properly exercised its statutory authority under Section 214(e) of the Act to designate the service areas of wireless CETCs in general, and of the Petitioners in particular.

In August 2003, the Iowa Board commenced a public rule making looking toward the simplification of its process for designating wireless carriers as CETCs. A primary issue in this rule making was the determination as to how the term “service area” should be defined for wireless carriers seeking designation as CETCs. The Iowa Board noted that its prior definition of “service area” for ETC purposes did “not always align with the existing exchange boundaries

for wireline carriers.”⁹ It proposed instead to adopt a new rule that would grant CETC status to wireless carriers for a “service area” comprised of their FCC-licensed wireless service areas such as RSAs.

The Iowa Board’s proposed wireless CETC “service area” definition was not opposed by the participating Iowa wireline telephone industry and was opposed by several Iowa wireless carriers. Western Wireless, U.S. Cellular Corporation, Midwest Wireless, Iowa Wireless Services and Nextel objected that, in some cases, wireless carriers did not provide service throughout their entire FCC-licensed areas, and therefore would be unable to meet the requirements of the proposed new “service area” definition. Nextel submitted a counterproposal that would have limited the Iowa definition of “service area” to the area where the wireless carrier sought designation as a CETC. The Iowa Telecommunications Association (a trade association that represents over 150 Iowa wireline telephone companies) and Qwest Corporation opposed the Nextel counterproposal, stating that there should be a uniform standard applicable to all carriers and that Nextel’s alternative would allow wireless carriers to set their own individual standards.

By Order Adopting Rule (*In re: Eligible Telecommunications Carrier Designation for Wireless Carriers [199 IAC 39.2]*), Docket No. RMU-03-13, issued May 24, 2004 (“Iowa Wireless CETC Order,” copy attached as Exhibit D), the Iowa Board adopted a rule for defining the “service areas” of wireless CETCs for universal service purposes. Specifically, the Iowa Board adopted Subrule 39.2(5)(c), which defines the “service area” for a wireless CETC as “that area where the wireless company has been licensed by the FCC to provide service.”

⁹ Order Adopting Rule (*In re: Eligible Telecommunications Carrier Designation for Wireless Carriers [199 IAC 39.2]*), Docket No. RMU-03-13, issued May 24, 2004, p. 2.

In its subsequent orders granting the CETC applications of Petitioners, the Iowa Board explained further the purpose and rationale of its Subrule 39.2(5)(c). The Iowa Board stated that its prior requirement that ETCs provide service “throughout the historic landline exchange” was “often unable to be met by wireless carriers whose service areas often included part, but not all, of a landline exchange.” RSA 7 Partnership CETC Order at p. 1; RSA 8 Partnership CETC Order at p. 1; RSA 10 Partnership CETC Order at p. 1. The Iowa Board declared that its new Subrule 39.2(5)(c) “was intended to bridge the gap that existed between wireless and wireline companies with respect to the receipt of universal service funding by allowing wireless companies to serve parts of incumbent service areas pursuant to their operating licenses issued by the [FCC].” *Id.*

The Iowa Board was expressly aware of this Commission’s Highland Cellular Order¹⁰ when it adopted its Subrule 39.2(5)(c). It rejected Nextel’s proposed amendment because it “would give too much latitude to the wireless carriers seeking ETC status by allowing them to define their own service area, apparently without restriction.” Iowa Wireless CETC Order, p. 3. However, the Iowa Board tried to address the concerns of wireless carriers by adding Subrules 39.2(5)(c)(1) and 39.2(5)(c)(2), which allow wireless carriers that do not have the facilities to serve their entire FCC-licensed areas to seek a waiver of the wireless CETC “service area” definition in order to serve a smaller “service area” for CETC purposes (for at least a reasonable time period until the wireless CETC can expand its network coverage). As support for these waiver rules, the Iowa Board expressly cited the Highland Cellular Order for the proposition that this Commission has allowed wireless carriers to receive CETC designations in parts of their FCC-licensed service areas.

¹⁰ Memorandum Opinion and Order (Federal-State Joint Board on Universal Service, *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*), CC Docket No. 96-45, 19 FCC Rcd 6422 (2004) (“Highland Cellular Order”).

The Iowa Board's adoption of Subrule 39.2(5)(c), and its definition of wireless CETC "service areas" in terms of their FCC-licensed service areas, are fully congruent and consistent with its Section 214(e)(2) jurisdiction to designate the service areas of ETCs, and its Section 214(e)(5) authority to establish "service areas" for the purpose of determining universal service obligations and support mechanisms.

In considering and adopting its Subrule 39.2(5)(c), the Iowa Board acted in accordance with this Commission's oft-repeated observation that state commissions have the local familiarity and knowledge to make their own ETC determinations. As recently as its Report and Order (*Federal-State Joint Board on Universal Service*), FCC 05-46, released March 17, 2005 ("ETC Designation Order"), this Commission declared that state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well equipped to determine their own ETC eligibility requirements.

Iowa is an agricultural state that has a very large number (161) of incumbent local exchange carriers¹¹, many of which are rural telephone companies serving farms and farming communities. The Iowa Board recognized that wireline exchange boundaries and wireless service areas were developed in different eras by different agencies for different regulatory purposes, and that the resulting incompatibilities were exacerbated by the large number of small rural telephone companies in Iowa. Therefore, with the concurrence of the state wireline telephone association and ultimately of most of the state's wireless carriers, the Iowa Board crafted its own unique Iowa solution of defining wireless CETC "service areas" in terms of FCC-licensed wireless service areas (rather than in terms of the study areas of wireline telephone companies). Neither wireline nor wireless carrier interests appealed, or sought reconsideration or

¹¹ Iowa Utilities Board, Report on the Current Status of Local Telecommunications in Iowa (January 20, 2005), at p. 2.

further modification of Subrule 39.2(5)(c). It has remained in effect and unchanged since July 28, 2004.

The Iowa Board followed its Subrule 39.2(5)(c) to designate the CETC “service areas” of the Petitioners in September 2004. Each Petitioner was designated as a CETC in the Iowa counties that comprise its FCC-licensed RSA. These CETC service area designations are consistent and compliant with the express jurisdiction of state commissions in Sections 214(e)(2) or 214(e)(5) of the Act to designate ETC and CETC service areas. The Iowa Board’s CETC designations and CETC service area definitions for the Petitioners were not opposed or appealed by any rural telephone companies or other entities.

Petitioners recognize that the second sentence of Section 214(e)(5) may interpose some ambiguity. That sentence states that “[i]n the case of an **area served by a rural telephone company**, ‘service area’ means **such company’s ‘study area’** unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a **different definition of service area for such company** [emphasis added].”

Petitioners note that the Iowa Board may have reasonably interpreted the plain language of Section 214(e)(5)’s second sentence as being limited to “redefinition” proceedings applicable only to rural **telephone** companies seeking to vary their “service area” from their own “study area” for universal service purposes. The legislative history of Section 214(e)(5) does not reference or explain the purpose of the second sentence. However, the repeated and definite use in the sentence of the adjective “such” to limit application to a rural telephone company constitutes significant evidence that Congress intended that provision to apply only to changes in rural telephone company study areas and service areas. The Commission itself may have

recognized this in its recent ETC Designation Order when, in dicta, it substituted the broader term “a company” for the more restrictive “such company.” Specifically, at paragraph 73 thereof, the ETC Designation Order states that “for an area served by a **rural incumbent LEC**, however, the Act states that a **company’s** [rather than “such company’s”]service area for the purposes of ETC designation will be the **rural incumbent LEC’s** study area unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.”

Petitioners recognize that this Commission has taken a different approach to CETC designations and CETC service area designations in recent orders such as its Virginia Cellular Order,¹² Highland Cellular Order and Advantage Cellular Order.¹³ However, the Commission’s actions in these cases do not impose any restrictions or requirements on state commissions, such as the Iowa Board. Rather, the Commission proceedings are readily and completely distinguishable because they were conducted and resolved pursuant to Section 214(e)(6) of the Act, which grants separate and independent jurisdiction to the Commission to designate ETCs and ETC service areas in cases **where a state commission does not have jurisdiction** over an applicant for ETC status.

Petitioners note further that the rural telephone company service/study area “redefinitions” made by the Commission in its Virginia Cellular Order, Highland Cellular Order and Advantage Cellular Order were part and parcel of its public interest analyses. The

¹² Memorandum Opinion and Order (Federal-State Joint Board on Universal Service, *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*), CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (“Virginia Cellular Order”).

¹³ Order (Federal-State Joint Board on Universal Service, *Advantage Cellular Systems, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*), CC Docket No. 96-45, DA 04-3357, released October 24, 2004 (“Advantage Cellular Order”).

Commission in each instance conducted a public interest analysis focused upon the potential for rural “cream skimming” (primarily by comparing population density data), and designated the portions of rural telephone company study areas in which it was in the public interest to name the wireless applicant as a CETC.¹⁴ The Commission then proceeded directly to employ this very same public interest analysis to “redefine” the same service areas and partial study areas of the rural telephone companies in which the wireless carrier had been designated as a CETC.¹⁵

However, the Commission has made it very clear that the fact-specific public interest analysis that it uses for its own Section 214(e)(6) CETC designation proceedings is not required to be used by state commissions. Although the Commission has “strongly encouraged” state commissions to consider the same factors in their public interest reviews, it has expressly declined to mandate state commission consideration of such factors. See ETC Designation Order at par. 58-61. The Commission specifically has declined to require state commissions to employ its “cream skimming” analysis, but rather has only “strongly encouraged” states to examine the potential for “cream skimming” in wire centers served by rural telephone companies. *Id.* at par. 49. The Commission has declared that Section 214(e)(2) of the Act demonstrates Congress’s intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their own conclusions regarding the public interest, as long as such determinations are consistent with federal and other state law. *Id.* at par. 61. Moreover, the Commission has found that state commissions, as the entities most familiar with the service areas

¹⁴ Virginia Cellular Order at par. 26-39; Highland Cellular Order at par. 20-36; Advantage Cellular Order at par. 16-27.

¹⁵ Virginia Cellular Order at par. 40-45; Highland Cellular Order at par. 37-42; Advantage Cellular Order at par. 28-30. The Commission did not explain why it found it necessary to “redefine” the rural telephone company service areas. In fact, the Commission made it clear that the “redefinitions” did not modify the existing rules or procedures for calculation of costs on a study area basis by the affected rural telephone companies.

for which ETC designations are sought, are particularly well equipped to determine their own ETC eligibility requirements. *Id.*

It does not appear that the Commission would or should attempt to impose its public interest standards indirectly upon state commissions in the form of service area “redefinition” requirements when it repeatedly has declined to impose them directly as public interest analysis requirements. When rural telephone companies allege “cream skimming” or otherwise oppose designation of CETCs in all or some portions of their study areas, state commissions can develop an appropriate local public interest analyses to determine whether to designate additional CETCs and, if so, for what service areas. It does not appear that Congress intended to empower the Commission to require state commissions to conduct additional service area “redefinition” analyses or proceedings over and above the state’s public interest analyses, or to mandate the nature and standards of any “redefinition” proceedings that state commissions may themselves elect to employ.

In sum, Petitioners believe that the Iowa Board has lawfully and properly exercised its statutory authority under Sections 214(e)(2) and 214(e)(5) of the Act to designate the service areas of Iowa wireless CETCs in general, and to designate the Petitioners’ wireless CETC service areas in particular.

No Rural Telephone Companies Opposed the CETC Designation Applications of Petitioners

The Petitioners reiterate that no rural or other wireline telephone companies or telephone associations opposed their CETC applications before the Iowa Board. With adequate public notice and opportunity to be heard, none of the Iowa rural telephone companies whose study areas are included in whole or part within the wireless service areas of Petitioners opposed or appealed the Iowa Board’s designation of their CETC applications or CETC service areas.

If any of the rural telephone companies had opposed their CETC applications, Petitioners believe that the Iowa Board may have tailored their public interest analyses and may have included evaluations of population densities, “cream skimming” and other factors that the state deemed appropriate. However, the critical fact is that no rural telephone company objected to the CETC applications of any of the Petitioners. Even if they were not otherwise distinguishable, the absence of opposition distinguishes the Iowa Board’s CETC designation orders relating to Petitioners from the Commission’s Virginia Cellular Order and other Section 214(e)(6) orders. This absence of rural telephone company opposition would also distinguish the subject Iowa Board proceedings from CETC designation proceedings in many other states.

Hearing no opposition from rural telephone companies, the Iowa Board reasonably evaluated the CETC applications of Petitioners. The Iowa Board determined that they did not need to tailor its evaluations with respect to the more than two dozen non-objecting rural telephone companies whose study areas were partially overlapped. And, with no need to conduct detailed public interest analyses of potential harm to these non-objecting rural telephone companies, the Iowa Board reasonably saw no requirement to initiate additional state and federal proceedings to “redefine” the “service areas” of such rural telephone companies.

Petitioners note that this request for declaratory relief is limited to an instance where rural telephone companies did not object to wireless CETC service area designations and the Commission’s determination of this instant Petition may be similarly limited. This would clarify the status and obligations of Petitioners, while placing no limitations upon the rights and ability of objecting rural telephone companies to request the Commission to undertake “cream skimming” and other public interest analyses in Section 214(e)(6) proceedings. Likewise, the Iowa Board and other state commissions would retain their options and discretion to initiate

“cream skimming” and other public interest analyses in response to objections by rural telephone companies and other interested parties to state ETC designation applications.

Petitioners also note that Sections 214(e)(2) and 214(e)(5) of the Act permit the Iowa Board and state commissions to modify or limit the size of a CETC service area on the basis of public interest analyses without the need for duplicative state and federal “redefinitions” of rural telephone company study areas. Sections 214(e)(2) and 214(e)(5) specify no ceiling or floor for the composition and size of the CETC service areas designated by state commissions. Hence, if a rural telephone company had objected to the Iowa Board’s inclusion of parts of Audubon County in RSA 7 Partnership’s CETC service area, the Iowa Board could have determined the portion of Audubon County to be so included as part of its resulting public interest analysis. The Iowa Board would have had no need to initiate an additional proceeding to “redefine” the objecting rural telephone company’s study area and then to require RSA 7 Partnership or other interested parties to initiate a separate “redefinition” proceeding before this Commission.

Redefinition Proceedings Would Not Materially Change The Amounts of Portable USF Support Received by Petitioners

As indicated above, the Petitioners were designated as CETCs by the Iowa Board in their FCC-licensed wireless service areas in September 2004 and have subsequently been included by the Iowa Board in the necessary annual Section 254(e) certification. Their designated CETC service areas are Commission-licensed RSAs comprised of four, five or six different Iowa counties. The Petitioners provide line counts and receive portable USF support for customers whose billing addresses are located in the particular counties. In order to permit calculation of the per-line amounts of portable support to which they are entitled, the Petitioners are required further to group their customers by billing address within the study areas or partial study areas of the rural and non-rural telephone companies they overlap.

Redefinition of the more than two dozen rural telephone company study areas that the Iowa Board partially included within the CETC service areas of Petitioners is not likely to result in a significant change in the amounts of portable USF. Petitioners note that they have not gone to the time and expense of preparing population density studies and other potential “cream skimming” analyses as they were not required by the Iowa Board. However, rural Iowa is comprised of flat and fertile plains devoted primarily to agriculture, and is characterized by a relatively regular dispersal of farms and farming communities. It does not have the rugged terrain, irregularly scattered mountain and desert communities, and widely varying population densities of many of the states further to the West. Hence, population density patterns are relatively uniform along the boundaries of neighboring rural Iowa counties and RSAs, and throughout many rural Iowa telephone company wire centers and study areas. Therefore, if population density studies were to be conducted in and adjacent to the service areas of Petitioners, it is unlikely that significant potential “cream skimming” would be deemed to exist.

In addition, Iowa has significantly more rural telephone companies than most states. Most partially overlapped study areas in Iowa wireless CETC service areas are accidents of geography where a rural telephone company straddles the political boundaries of counties that were placed by the Commission in different RSAs. Given that the wireless service areas of Petitioners are limited by their Commission radio licenses, they are not able to select which portions of a multi-county rural telephone company study area they can serve via their own wireless facilities. Rather, pursuant to Commission licenses and regulations, they can serve only those portions within the counties included in their RSAs. Petitioners, as partnerships with rural telephone company partners, have not knowingly engaged in any deliberate attempts to “cream skim”.

Conclusion

The Commission is requested to issue a Declaratory Ruling that the Iowa Board is not required formally to “redefine” (or to initiate a state-federal proceeding to “redefine”) the service areas of the more than two dozen rural telephone companies whose study areas are partially located within the Iowa Board-designated CETC service areas of the Petitioners before the Petitioners may receive or continue to receive portable universal service support. The Commission is asked to concur or recognize that the Iowa Board lawfully has exercised its authority under Section 214(e) of the Communications Act to define the service areas of Iowa wireless CETCs in terms of their FCC-licensed wireless service areas rather than the study areas of rural telephone companies, and to declare that the Iowa Board is not required to undertake separate or further “redefinition” proceedings before the Petitioners may receive and continue to receive universal service support. In addition or in the alternative, the Commission is requested to declare that separate or further “redefinition” proceedings are not necessary because none of the rural telephone companies located in the wireless CETC service areas of Petitioners have alleged “cream skimming” or otherwise opposed the Iowa Board’s CETC designations or CETC service area definitions.

Respectfully submitted,

**RSA 7 LIMITED PARTNERSHIP
IOWA 8 – MONONA LIMITED PARTNERSHIP
IOWA RSA 10 GENERAL PARTNERSHIP**

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By 

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